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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,806	11/12/2003	John C. Herman	H009.PAT-2	6970

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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,806	Applicant(s) HERMAN, JOHN C.	
	Examiner James R. Brittain	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 9 and 12-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

Applicant's reference to this application as a continuation of a provisional application is improper and must be stricken. Continuation status can only exist between non-provisional applications.

Claim Objections

Claims 9 and 12-20 are objected to because of the following informalities: The terms "the object retaining means" (claim 9, line 2); "the clip device" (claim 12, line 3) and "the back edge" (claim 16, line 2) lack clear antecedent basis. Claim 16 is in improper form since it fails to end with a period. The remaining claims are objected to because they depend from objected to claims. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "lip portion" is first introduced in claim 1, line 9 where it lacks antecedent basis. It is then reintroduced with an indefinite article in claim 4 where it isn't clear if this is a double inclusion of the structure introduced in claim 1 or some other structure. Further, the term "the lip portion" (claim 5, lines 1, 2) is indefinite because it isn't clear if it refers to the structure

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of claim 1 or the structure of claim 4. The remaining claims are indefinite because they depend from indefinite claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12 and 16-18 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Kilo et al. (US 5692657).

Kilo et al. (figures 1-3) teaches assembly structure for securing a stethoscope to clothing, the assembly comprising: a main body 21 having a top surface and a bottom surface; clip means 55 for securing the assembly to clothing; and item retaining means in the form of the finger 45 for releasably securing the stethoscope to the main body. In regard to claims 16-18, the finger is a lip portion extending from the main body and extending along the back edge by extending parallel and adjacent thereto, curving into a retaining protrusion parallel to the main body and terminating in a retention tab 51.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-6, 10, 13-15 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kilo et al. (US 5692657) in view of Saarikko et al. (US 5597102).

Kilo et al. (figures 1-3) teaches clip device structure for securing a stethoscope to clothing, the clip device comprising: a main body 21 having a top surface and a bottom surface; a support wall 57 extending from the top surface, clip means 55 extending from the supporting wall 57 over the top surface of the main body for securing the assembly to clothing; and item retaining means in the form of the finger 45 defining a lip portion extending from the main body and extending along the back edge by extending parallel and adjacent thereto over the bottom surface of the main body for releasably securing the stethoscope to the main body. The difference is that the support wall 57 doesn't extend from the front edge. However, Saarikko et al. (figures 1, 4, 5) teaches that it is desirable to have the clip 5 extend from the edge of the base member in that the figures show the bight of the clip extending to the edge so as to more efficiently utilize the available space of the base member. It would have been obvious to modify the fastener of Kilo et al. so that the support wall extends from the edge of the base member in view of Saarikko et al. suggesting such a location for the clip 5 to extend from. As to claims 2 and 14, both the clips of Kilo et al. and Saarikko et al. are cantilevered, the first pivotally from the supporting wall, the second resiliently from the supporting wall, and applicant is given Official Notice that the use of two spaced apart clip to secure a holder to clothing is a duplication of the clipping structure of Kilo et al. and Saarikko et al. and is well known in the art. In regard to claims 3 and 15, both the clips of Kilo et al. and Saarikko et al. have protruding portions. In regard to claims 4-6, the finger is a lip portion curving into a retaining protrusion parallel to the

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main body and terminating in a retention tab 51. As to claims 10 and 20, the back edge of the base member is curved at the corners adjacent the finger 45.

Claim 19 is rejected under 35 U.S.C. §103(a) as being unpatentable over Kilo et al. (US 5692657) in view of Grose (US 6419133).

Kilo et al. (figures 1-3) teaches clip device structure for securing a stethoscope to clothing, the clip device comprising: a main body 21 having a top surface and a bottom surface; a support wall 57 extending from the top surface, clip means 55 extending from the supporting wall 57 over the top surface of the main body for securing the assembly to clothing; and item retaining means in the form of the finger 45 defining a lip portion extending from the main body and extending along the back edge by extending parallel and adjacent thereto over the bottom surface of the main body for releasably securing the stethoscope to the main body. The difference is that the main body lacks a pattern of grooves. However, Grose (figures 1, 2) teaches that it is desirable to have the main body configured with grooves 12 so as to better hold tubes of the stethoscope. As Grose teaches patterning the base member with grooves to better secure the held object, it would have been obvious to modify the holder of Kilo et al. to have a pattern of grooves on the base member to hold an object. The particular pattern of grooves on the front and back surfaces is a matter of choosing a configuration for the desired holding effect of an object and is obvious over Grose.

Claims 7-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kilo et al. (US 5692657) in view of Saarikko et al. (US 5597102) as applied to claim 1 above, and further in view of Grose (US 6419133).

Further modification of the holder of Kilo et al. such that the base member has a pattern of grooves would have been obvious in view of Grose (figures 1, 2) teaching that it is desirable to have the main body configured with grooves 12 so as to better hold tubes of the stethoscope and as Grose teaches patterning the base member with grooves to better secure the held object, the particular pattern of grooves on the front and back surfaces is a matter of choosing a configuration for the desired holding effect of an object and is obvious over Grose.

Conclusion

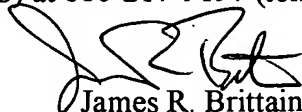
Lefebvre (US 6484918, figure 1) and Turner, Jr. et al. (US 4733808, figure 5) teach pertinent holder structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB